

Application No.: 10/517,722

mg-2513 (00143-00244)

REMARKS

This application has been carefully studied and amended in view of the Office Action dated March 16, 2007. Reconsideration of that action is requested in view of the following.

Parent claim 7 has been amended to the use of a xenon containing gas mixture and a further spasmolytic which is administered to treat a patient suffering from spasms. In that sense, claim 7 by this amendment deletes reference to various other forms of conditions. In view of this amendment it is submitted that the rejection of the claims under 35 USC 112 as being indefinite should be withdrawn. Similarly, claim 7 has been amended so that it is no longer in what might be considered Jepson form. Accordingly, that rejection under 35 USC 112 should also be withdrawn. Finally, claim 11 has been canceled. Accordingly, the rejection of claim 11 under Section 112 is now moot.

In order to advance the prosecution of this case not only has claim 7 been amended as noted above, but in addition, various dependent claims have been canceled. Claim 18 has been added to define a group of spasms for which the invention would be used.

It is respectfully submitted that parent claim 7 and its dependent claims are patentable over the prior art and in particular over Petzelt in view of Thomas and Zapol. As pointed out above, claim 7 is now specifically directed to the treatment of spasms by the use of a combination medicament which comprises a xenon containing gas mixture and a further spasmolytic. It is submitted that this method, as defined in claim 7, is not disclosed in nor obvious from Petzelt whether taken alone or in combination with Zapol or Thomas.

Petzelt relates to the use of xenon or xenon gas mixtures for treating neurointoxications. The patients described in Petzelt are only those patients who suffer from an increased neurotransmitter release. Petzelt does not disclose the treatment of xenon containing compositions for the treatment of patients suffering from spasms. Petzelt therefore neither

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discloses a combination medicament comprising xenon and a further spasmolytic nor the use of such a combination medicament.

Such use of a combination medicament is also not obvious in view of Zapol or in view of Thomas.

Zapol relates to methods of treating or preventing ischemia-reperfusion injury or inflammation through inhalation of nitric oxide gas. The patients described in Zapol are only those patients who have suffered from ischemia. There is no teaching in Zapol that the combination of gaseous nitric oxide and the second compound that potentiates the therapeutic effect of gaseous nitric described therein may be used to treat spasms. Even if Zapol would teach the use of a gaseous nitric oxide for the treatment of spasms, it would not be obvious for the person skilled at art to combine gaseous nitric oxide with xenon to treat patients suffering from spasms since the state of the art xenon has been used as a narcotic, but not as a spasmolytic.

Thomas relates to the use of nitric oxide for alleviating cerebral vasoconstriction in a human. The patients described in Thomas are patients having a constricted cerebral blood vessel. However, Thomas does not teach nor render it obvious to combine the use of nitric oxide with xenon. Since xenon is usually used as a narcotic and, under normal conditions, patients having a constricted blood vessel are not in a need for applying narcotics, it is not evident why the person skilled in the art should combine the use of nitric oxide with the use of xenon in the form of a combination medicament. Such a combined use is certainly not suggested by Petzelt since this document is related to neurointoxications and has therefore nothing to do with constricted cerebral blood vessels.

In summary, Petzelt, Zapol and Thomas do not teach or suggest, either alone or in combination with each other, that a combination medicament comprising xenon and a further spasmolytic can be used to treat spasms in a patient suffering therefrom.

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Reconsideration is respectfully requested of the rejection of claim 7 and various dependent claims on the ground of obviousness-type double patenting. In that regard, attached hereto is a Terminal Disclaimer which should now obviate the rejection.

In view of the above remarks and amendments this application should be passed to issue.

Respectfully submitted,

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